



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1998

Ms. Donna R. Bennett
District Attorney, 173rd Judicial District
Henderson County
Henderson County Courthouse
Athens, Texas 75751

OR98-3306

Dear Ms. Bennett:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120650.

The Henderson County District Attorney (the "district attorney") was asked to provide information about "each criminal case tried before a jury by your office from the time you first became District Attorney," to include (1) cause number, (2) name, address, and telephone number of defense counsel, (3) date the jury was seated and trial began, (4) verdict, (5) punishment assessed if defendant was found guilty, and (6) final plea bargain offered prior to trial. You first assert that the information requested is "not readily accessible, in my office, in the form requested" and cite to Open Records Decision No. 467 (1987). You also assert that the final plea bargains offered are protected under section 552.103(a) and section 552.108(a)(3) and (b)(3) as attorney work product and internal records of the prosecutor.

We will address your argument that, as provided by Open Records Decision No. 467 (1987), you are not required to create a list of the requested information for the requestor. In Open Records Decision No. 467, we told a school district that it was not required to create or prepare new information or to provide it in the form sought by the requestor. *Id.* at 1-2. We also explained that the district could not deny a request for existing information because compiling the information would take a great deal of employee time. *Id.* at 5. We also suggested that if responding to the request by "searching for the college transcripts of all school teachers and administrators who have taken six or more semester hours per semester since 1975 is more burdensome than simply providing all teachers' and administrators' college transcripts, the district may release all of the transcripts." *Id.* at 5.

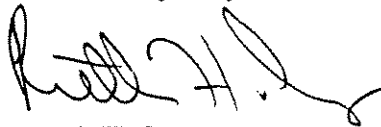
You assert that, except for the plea bargains offered, a list showing the items requested could be compiled by the Henderson County District Clerk. You state that your office does not have this type of information compiled in a list nor does it have the computer

capability to do so. However, the requestor does not appear to seek to have your office compile a new document showing only the listed items. Rather, the requestor asks for the currently existing records that show the requested information. The Open Records Act provides that existing governmental records are subject to public access unless excepted from disclosure by one of the exceptions within the Open Records Act. Gov't Code § 552.006. We thus address your arguments that at least a portion of the requested records are excepted from disclosure.

Representative samples of the requested records were submitted to this office for review.¹ All of the samples submitted to this office were filed with a court and are generally a matter of public record. *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). You did not submit a sample of an offered plea bargain, but we note that since the requestor seeks copies of plea bargains that were actually offered to defendants, sections 552.103(a) and 552.108(a)(3) and (b)(3) are not applicable. There is no section 552.103(a) interest in information has been obtained by all parties to the litigation. Open Records Decision Nos. 349 (1982), 320 (1982). Although you argue that the plea bargains are protected work product under section 552.108(a)(3), we note that this exception is inapplicable to information disclosed to opposing counsel. Gov't Code § 552.007. Section 552.108(b)(3) protects from disclosure only internal records of a prosecutor, which would not include records that have been disclosed to defendants. As the records at issue are not excepted from disclosure, they must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', written over a horizontal line.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 120650

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Enclosures: Submitted documents

cc: Mr. Fred Head
Attorney at Law
106 South Prairieville
Athens, Texas 75751-0312
(w/o enclosures)